

Application No. 10/551,018
Paper Dated: January 12, 2010
In Reply to USPTO Correspondence of October 22, 2009
Attorney Docket No. 4174-052881

COMMENTS

The Statement of Reasons for Allowance presented in the October 22, 2009 Notice of Allowability asserts that WO 2003/107466, corresponding to U.S. Patent Application Publication No. 2005/0233186 to Ryoichi et al., is considered to be the closest prior art. For purposes of clarifying the record, Applicants respectfully disagree that either the above-identified PCT document or the corresponding United States Publication are prior art with respect to the subject application.

The subject application represents the United States national stage of International Patent Application No. PCT/JP2004/003995, filed on March 19, 2004. This PCT application claims priority to two Japanese patent applications, each filed on March 31, 2003. Priority to these two Japanese applications under 35 U.S.C. §119 was properly claimed in both the International and United States filings and acknowledged by the Examiner as recently as the November 13, 2009 Supplemental Notice of Allowability.

WO 2003/107466 has a publication date of December 24, 2003. This is less than one year before the filing date of the PCT application on which the subject application is based, and thus WO 2003/107466 is not prior art under 35 U.S.C. §102(b). In addition, the publication date of WO 2003/107466 is after the 35 U.S.C. §119 priority date of the subject application. Should this priority be perfected by submitting an English-language translation of the priority Japanese patent applications (certified copies of the Japanese applications were forwarded by the International Bureau), WO 2003/107466 would not qualify as prior art under §102(a). (See M.P.E.P. §706.02(a) & (b).) U.S. 2005/0233186, which was published on October 20, 2005, cannot qualify as prior art under either of 35 U.S.C. §102(a) or (b).

United States 2005/0233186 additionally fails to qualify as prior art under 35 U.S.C. §102(e). While this document is based on WO 2003/107466, discussed above, WO 2003/107466 did not publish in the English language and therefore the 35 U.S.C. §102(e) date of United States 2005/0233186 is December 16, 2004, the date the application was filed in the United States. (See M.P.E.P. §706.02(f).) This date is after both the PCT filing date and the priority date of the subject application. Even if United States 2005/0233186 was afforded the

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June 16, 2003 filing date of WO 2003/107466, this date would still be after the March 31, 2003 priority date of the subject application.

Therefore, Applicants respectfully disagree that either WO 2003/107466 or United States 2005/0233186 is prior art to the subject application.

The foregoing comments are made only for the sake of clarifying the record and should not be regarded as a disagreement that the pending claims are allowable or that the Notice of Allowability should be withdrawn.

Respectfully submitted,
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